

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CRAIG A. LYLES,	:	
	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	No. 00-628
	:	
ALLSTATE INSURANCE COMPANY,	:	
	:	
Defendant.	:	
	:	

**MEMORANDUM**

ROBERT F. KELLY, J.

DECEMBER 22, 2000

The Plaintiff brought this action alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, et seq. ("Title VII"), and the Pennsylvania Human Relations Act, 43 P.S. § 951, et seq. ("PHRA"). After a three day trial, the jury returned a verdict in favor of the Defendant as to all claims. Presently before this Court is the Plaintiff's Motion for a New Trial.<sup>1</sup> For the reasons that follow, Plaintiff's Motion will be denied.

**I. BACKGROUND.**

A brief summary of the facts that are relevant to this Motion is necessary in order to understand this case. The

---

<sup>1</sup> The Defendant argues that Plaintiff's Motion for a New Trial should be dismissed because Plaintiff failed to order the trial transcript within the period of time required by Local Rule of Civil Procedure 7.1(e). (Def.'s Mem. Opp'n Pl.'s Mot. for New Trial at 3.) Ordinarily, we would grant Defendant's request, however, the Court will examine the Plaintiff's Motion for a New Trial because the Defendant was kind enough to have ordered the trial transcript within the required period.

Plaintiff was hired by the Defendant as a claims adjuster in November of 1993. (Def.'s Mot. Summ. J., Ex. A at 29, 31.) Plaintiff received several promotions and transfers from the Defendant from 1993 through 1996. (Id. at 34.) Plaintiff was promoted to the position of Customer Service Manager of Defendant's Philadelphia Service Center. (Id. at 34-35.) Dawn Hanson, a Customer Representative at the Philadelphia Service Center, was supervised by Plaintiff. (Id. at 66-68.) In February of 1998, Dawn Hanson accused Plaintiff of sexually harassing her after she received a written warning for insubordination from the Plaintiff and Plaintiff's supervisor, Gwen Carter.<sup>2</sup> (Id. at 88-96.)

Defendant instituted an investigation into Dawn Hanson's allegations against the Plaintiff in compliance with its Sexual Harassment Policy. (Def.'s Mot. Summ. J., Ex. A at 205-209; Ex. B; Ex. C at 10-11.) Melissa Glassmire, a Human Resources Division Manager for Defendant, and Anna Singer, a Human Resources Consultant for Defendant, conducted the investigation. (Def.'s Mot. Summ. J., Ex. C at 10-11.) Pursuant to the investigation, Melissa Glassmire and Anna Singer interviewed the Plaintiff, Dawn Hanson, Gwen Carter, some of

---

<sup>2</sup> Dawn Hanson requested to speak with Gwen Carter in private. It was in this private conversation that Dawn Hanson accused the Plaintiff of sexual harassment. (Def.'s Mot. Summ. J., Ex. A at 90-96.)

Defendant's employees, and other relevant parties to the incident.<sup>3</sup> (Def.'s Mot. Summ. J., Ex. C at 14-15.)

After completion of the investigation, Melissa Glassmire and Anna Singer prepared a Summary of Evidence and recommended that Defendant discharge the Plaintiff. (Def.'s Mot. Summ. J., Ex. C at 31; Ex. K.) Bill Wells, Defendant's Regional Human Resources Manager, agreed with the recommendation after reviewing the Summary of Evidence. (Def.'s Mot. Summ. J., Ex. L at 21-59.) On March 17, 1998, Defendant discharged Plaintiff. (Def.'s Mot. Summ. J., Ex. A at 213.) Defendant did not replace Plaintiff because the Philadelphia Service Center was scheduled to be closed in the Spring of 1998. (Def.'s Mot. Summ. J., Ex. N at 33-34.) On February 2, 2000, Plaintiff filed this lawsuit claiming that his discharge by Defendant was based on race discrimination. (See Compl.)

## **II. STANDARD.**

In evaluating a motion for a new trial on the basis of trial error, the Court must first determine whether an error was made in the course of trial, and then must determine "whether that

---

<sup>3</sup> Specifically, Melissa Glassmire and Anna Singer interviewed Gregory Wendt, Bonnie Harris and Dianne Chamberline who were other Customer Service Representatives in the Philadelphia Service Center. (Def.'s Mot. Summ. J., Ex. A at 137; Ex. C at 11-12.) Also interviewed were two witnesses whom the Plaintiff claimed would support his position, Michael McBride, the former Manager of the Philadelphia Service Center, and Kathy Santangelo, a Claims Department employee of Defendant. (Id.)

error was so prejudicial that refusal to grant a new trial would be inconsistent with substantial justice." Farra v. Stanley-Bostitch, Inc., 838 F. Supp. 1021, 1026 (E.D. Pa. 1993). The trial court has broad discretion in determining the admissibility of evidence and whether a new trial should be granted based on an erroneous evidentiary ruling. Threadgill v. Armstrong World Indus., Inc., 928 F.2d 1366, 1370 (3d Cir. 1991).

### **III. DISCUSSION.**

The Plaintiff argues that a new trial should be granted because of three alleged errors by the Court: the exclusion of Exhibit P-16 from admittance into evidence; the admission of Defendant's Exhibits D-2 through D-7 into evidence; and the Court's jury charge instructing the jury on "Defendant's legitimate business reason for its decision" to terminate the Plaintiff.<sup>4</sup> This court will address, in turn, each of the Plaintiff's contentions.

#### **A. Exclusion of Exhibit P-16.**

The Plaintiff argues that this Court's exclusion of Exhibit P-16 from jury deliberation was an error because it was

---

<sup>4</sup> The Plaintiff acknowledges that "[s]tanding alone, any one of the three errors alleged above may not be enough to justify a new trial." (Pl.'s Mot. for New Trial, ¶ 31.) The Plaintiff alleges, however, that "[t]aken together, they are enough to warrant a new trial . . . ." (Id.)

admitted into evidence during Plaintiff's case.<sup>5</sup> (Pl.'s Mot. for New Trial, ¶¶ 8-17.) Plaintiff argues that he was prejudiced by the Court's action because Exhibit P-16 demonstrated that a white manager at Allstate was treated more favorably than the black Plaintiff. (Pl.'s Mot. for New Trial, ¶¶ 5-8.) In addition, Plaintiff argues that he was further prejudiced by the Court's action because his counsel, believing that Exhibit P-16 had been admitted into evidence, referred to and invited the jurors to read Exhibit P-16 in his closing argument. (Pl.'s Mot. for New Trial, ¶¶ 18- 19.)

The confusion as to whether Exhibit P-16 was admitted into evidence during trial falls squarely upon Plaintiff's counsel. Plaintiff's counsel made confusing statements about what exhibits he sought to introduce into evidence. (N.T. 11/8/00 at 60-63.) During jury deliberations, the Court permitted a review of the trial tapes in an attempt to clarify whether Exhibit P-16 had been admitted. (Id.) Due to the confusion, the Court permitted Defendant to offer an objection to the admittance of Exhibit P-16. (N.T. 11/8/00 at 63-64.) Defendant objected to the admittance of Exhibit P-16 based on lack of foundation. (Id.) The Court ruled that "to the extent . . . that [Exhibit P-16] was referred to and anybody used it, that

---

<sup>5</sup> Exhibit P-16 is an Allstate "job in jeopardy" notice allegedly issued to Mark Meehan, a white Allstate manager.

is in evidence. To the extent that any parts of it were not read . . . I'm not going to admit it." (N.T. 11/8/00 at 63, 21-25.) Defendant argues that the Court's ruling was proper because the "Plaintiff did not establish the requisite foundation for the admission of the document." (Def.'s Mem. Opp'n Pl.'s Mot. for New Trial at 6.) Defendant argues that Plaintiff failed to prove who authored the document, when the document was authored, and whether the witness upon whom the Plaintiff relied for identification of Exhibit P-16 was sufficiently familiar with the document. (Id.)

"The burden of proof for authentication is slight." United States v. Reilly, 33 F.3d 1396, 1404 (3d Cir. 1994)(quoting Link v. Mercedes-Benz of N. Am., Inc., 788 F.2d 918, 927 (3d Cir. 1986)(citation omitted)). Federal Rule of Evidence 901(a) requires identification of a document as a condition precedent to admissibility. Fed. R. Evid. 901(a). Examples of appropriate methods of authentication are provided in Federal Rule of Evidence 901(b). Fed. R. Evid. 901(b). Specifically, Federal Rule of Evidence 901(b)(1) provides that an example of authentication is "[t]estimony of witness with knowledge. Testimony that a matter is what it is claimed to be." Fed. R. Evid. 901(b)(1).

The Plaintiff's attorney introduced Exhibit P-16 by showing it to Bill Wells, Defendant's Human Resource Manager for

the Northeast Region, and asking Mr. Wells to identify it. (N.T. 11/7/00 at 52.) Mr. Wells identified Exhibit P-16 as a job-in-jeopardy notification for Mark Meehan, Defendant's former agency manager. (Id.) Since Mr. Wells is Defendant's Human Resource Manager for the Northeast Region and he assisted in the investigation which resulted in the writing of Exhibit P-16, Mr. Wells possessed knowledge of the contents of Exhibit P-16. Therefore, because Mr. Wells was a knowledgeable witness who testified that Exhibit P-16 was what it was claimed to be, Exhibit P-16 was properly identified according to Federal Rule of Evidence 901(a). Thus, the Court erred in refusing to admit Exhibit P-16 into evidence; however, this error was harmless and must be disregarded.

"To grant a new trial on improperly excluded evidence, the exclusion must have constituted prejudicial error." Smith v. Crown Equip. Corp., No. 97-541, 1998 WL 633982, at \*4 (E.D. Pa. Aug. 21, 1998), aff'd, \_\_\_ F.3d \_\_\_ (3d Cir. 1999). Federal Rule of Civil Procedure 61, entitled Harmless Error, provides:

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does

not affect the substantial rights of the parties.

See Fed. R. Civ. P. 61. Thus, according to Federal Rule of Civil Procedure 61, "'harmless errors' are technical errors or defects which do not affect the rights of a party." Smith, 1998 WL 633982, at \*4 (citing Kotteakos v. U.S., 328 U.S. 750, 760 (1946)). A new trial will be ordered if the alleged error affected substantial rights of the parties; however, if the alleged error did not affect the substantial rights of the parties, then it is a harmless error and must be disregarded. Id. at \*4 (citing Harkins v. Ford Motor Co., 437 F.2d 276, 278 (3d Cir. 1970)).

In considering the record and the circumstances of this case, the Court finds that the exclusion of Exhibit P-16 did not affect Plaintiff's substantial rights. To begin, the confusion as to the admission of Exhibit P-16 was due solely to the conduct of Plaintiff's counsel. Secondly, Exhibit P-16 was admitted to the extent that it was used and referred to during the trial. The Court did not entirely exclude Exhibit P-16 from evidence, but merely forbade the admission of the unread portion of the document and barred its submission to the jury during deliberations. During the trial, Plaintiff's attorney used the exhibit to establish that a white agency manager had received a "job-in-jeopardy" warning after being accused of sexual



harassment. (N.T. 11/07/00 at 52-53.) Additionally, during trial, Plaintiff's attorney questioned the witness regarding Plaintiff's treatment as compared to the treatment of the white manager for whom Exhibit P-16 was written. (Id.) Thus, Plaintiff's attorney used Exhibit P-16 to establish that Plaintiff had received different treatment than a white manager accused of sexual harassment. The Court's exclusion of the unread portion and physical document of Exhibit P-16 into evidence did not hinder Plaintiff's presentation of his case nor impede the purpose for which the Plaintiff offered the exhibit. Thus, the Plaintiff's rights were not substantially affected and the exclusion of Exhibit P-16 was harmless error and is disregarded.

**B. Admission of Defendant's Exhibits D-2 Through D-7.**

Plaintiff argues that the Court's admission of Defendant's Exhibits D-2 through D-7 was an error.<sup>6</sup> (Pl.'s Mot. for New Trial, ¶¶ 21-27.) During trial, the Court allowed the admission of these exhibits over Plaintiff's hearsay objections. (Id. ¶ 25.) Plaintiff argues that the exhibits should have been excluded because the people whose statements were transcribed did

---

<sup>6</sup> The exhibits are transcribed statements of: Dawn Hanson (Ex. D-2); Gregory Wendt (Ex. D-3); Bonnie Harris (Ex. D-4); Diane Chamberlain (Ex. D-5); Kathy Santangelo (Ex. D-6); and Michael McBride (Ex. D-7). (Pls. Mot. for New Trial, ¶ 22.) With the exception of Michael McBride, none of these individuals testified at trial. (Id. ¶ 23.)

not testify at trial.<sup>7</sup> (Id. ¶¶ 23-25.) Plaintiff further argues that the transcribed statements substantially influenced the jury's verdict and therefore he was prejudiced by their admission. (Id. ¶ 26.)

The Federal Rules of Evidence define hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Fed. R. Evid. 801(c). Thus, the hearsay rule requires that in order for evidence to be excluded it must be offered for the truth of the matter asserted. Id. This case is a race discrimination claim involving Plaintiff's discharge from employment based on violations of Defendant's sexual harassment policy. (See Compl.) Defendant's investigators relied upon the transcribed statements when they made their recommendation for Plaintiff's discharge for violation of Defendant's sexual harassment policy. As such, Exhibits D-2 through D-7 were not offered to prove that Plaintiff was a sexual harasser, which is not the issue in this case, but were offered to show the information Defendant relied upon in making its determination to discharge Plaintiff. As such, Defendant's Exhibits D-2 through D-7 are not hearsay.

At trial, the Court carefully differentiated

---

<sup>7</sup> Michael McBride (Ex. D-7) did testify at trial. (Pl.'s Mot. for New Trial, ¶ 23.)

Plaintiff's claim of race discrimination, the issue for the jury, from the ancillary claim of sexual harassment against the Plaintiff. The Court explained to the jurors that the case was a racial discrimination case, not a sexual harassment case. (N.T. 11/8/00 at 50.) As the Defendant correctly asserts:

The validity of the initial [sexual harassment] complaint is not the central issue, because the ultimate falseness of the complaint proves nothing as to the employer, only as to the complaining employee. The real issue is whether the employer reasonably believed the employee's allegation and acted on it in good faith, or to the contrary, the employer did not actually believe the co-employee's allegation but instead used it as a pretext for an otherwise discriminatory dismissal.

(Def.'s Mem. Opp'n Pl.'s Mot. for New Trial at 7 (quoting Marshall v. Midlantic Bank, N.A., No. 96-4964, 1997 U.S. Dist. LEXIS 21074, at \*10-\*11 (E.D. Pa. Dec. 31, 1997)(citation omitted)). The Court instructed the jury that the underlying sexual harassment case was only relevant to Plaintiff's race discrimination claim to the extent that it revealed whether Defendant's true reason for Plaintiff's discharge was based on the sexual harassment allegations leveled against him. (N.T. 11/7/00 at 109-110.) The Court further stressed the point that the transcribed statements were admitted for the limited purpose of showing what the Defendant relied upon in its decision to terminate the Plaintiff. (Id. at 107-146.) Thus, the Court's limiting instructions regarding admission of the transcripts properly narrowed the relevance of the transcribed statements.

Therefore, the Court's admission of the transcribed statements into evidence was proper and the Plaintiff's Motion for a New Trial based on this ground is denied.

**C. The Court's Jury Instruction.**

Lastly, the Plaintiff argues that the Court's instructions to the jury that referred to "Defendant's legitimate business reason for its decision" were erroneous. (Pl.'s Mot. for New Trial, ¶ 29.) The Court will not address the merits of this claim because Plaintiff's counsel failed to preserve any objection to the jury charge and, therefore, he is deemed to have waived the challenge.

According to Federal Rule of Civil Procedure 51, "No party may assign as error the giving or failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection . . . ." Fed. R. Civ. P. 51. Thus, a party who did not challenge the trial court's jury instructions at an appropriate time is considered to have waived the challenge. Id. A party may be able to overcome this finding if able to demonstrate that such finding would result in a miscarriage of justice. Smith v. Borough of Wilkinsburg, 147 F.3d 272, 276 (3d Cir. 1998)(quoting Fashauer v. New Jersey Transit Rail Operations, 57 F.3d. 1269, 1289 (3d Cir. 1995)(citation omitted)).

In its jury charge, the Court referred to "Defendant's legitimate business reason for its decision" to discharge Plaintiff. (N.T. 11/8/00 at 52-53.) During the charge conference, Plaintiff's counsel did not object to the Court's reference to Defendant's legitimate non-discriminatory reasons for its decision nor Defendant's proposed jury instruction number six, entitled "Legitimate Non-Discriminatory Reasons." (Def.'s Proposed Jury Instruction No. 6 at 14.) At sidebar, after the charge was delivered but before jury deliberations, the Court asked counsel, "Do you have any additions or corrections?" and Plaintiff's counsel responded, "No." (N.T. 11/8/00 at 57.) As evidenced by the above, Plaintiff had ample opportunity to object to the "Defendant's legitimate business reason for its decision" portion of the jury charge, but did not. Thus, Plaintiff did not properly preserve his objection to the charge and is therefore deemed to have waived the challenge.

In order to overcome this presumed waiver of his challenge, Plaintiff must demonstrate a miscarriage of justice. To do this, Plaintiff must prove that "the error is 'fundamental and highly prejudicial or if the instructions are such that the jury is without adequate guidance on a fundamental question,'" and that the "'failure to consider the error would result in a miscarriage of justice.'" Smith, 147 F.3d at 276 (quoting Fashauer, 57 F.3d at 1289)(citation omitted)). In his Motion for

a New Trial, Plaintiff neither mentions nor demonstrates a miscarriage of justice. (Pl.'s Mot. for New Trial, ¶¶ 28-30.)

In its instructions to the jury, the Court stated that if the jury found that the Plaintiff had met the elements of his prima facie case, then the jury was to consider Defendant's stated reason for its decision. (N.T. 11/8/00 at 49.) The Court went on to explain that it was the jurors who must decide whether or not to believe that the Defendant's stated reason for Plaintiff's discharge was true. (Id. at 49-52.) The Court's reference to Defendant's legitimate non-discriminatory reason was intended to instruct the jury that Defendant's stated reason for its discharge of Plaintiff did not have to be found wise, it only had to be not based on Plaintiff's race. (N.T. 11/8/00, at 49.) As evidenced by the instructions themselves, the Court's reference to "Defendant's legitimate business reason for its decision" was not prejudicial. The Court's jury instructions were not only non-prejudicial, but they gave the jurors adequate guidance on the fundamental question of whether Defendant had discriminated against Plaintiff based on his race. Thus, the Plaintiff's claim is denied since the Plaintiff is unable to prove a miscarriage of justice.

#### **IV. CONCLUSION.**

In summary, the Plaintiff has failed to prove that he is entitled to a New Trial. The exclusion of Exhibit P-16 was

harmless error and the admission of Defendant's Exhibits D-2 through D-7 was proper since they were not hearsay. Lastly, the Plaintiff waived his challenge to the Court's jury instruction because he failed to preserve the objection and cannot demonstrate that such finding would result in a miscarriage of justice. Therefore, the Plaintiff's Motion for a New Trial is denied.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

_____	:	
CRAIG A. LYLES,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	No. 00-628
	:	
ALLSTATE INSURANCE COMPANY,	:	
	:	
Defendant.	:	
_____	:	

**ORDER**

AND NOW, this 22nd day of December, 2000, upon consideration of Plaintiff's Motion for a New Trial (Dkt. No. 26), and Defendant's Response (Dkt. No. 27) thereto, it is hereby ORDERED that said Motion is DENIED.

BY THE COURT:

---

Robert F. Kelly, J.